



July 21, 2020

The Honorable Terry Rambler
Chairman
San Carlos Apache Tribe
Post Office Box 0
Apache Gem Rd. Marker 2
San Carlos, AZ 85550

Ref: *Resolution Copper Mining Project and Southeast Arizona Land Exchange
Tonto National Forest, Penal County, Arizona
ACHP Project Number: 012344*

Dear Chairman Rambler:

Thank you for your July 9, 2020, letter concerning the U.S. Forest Service's (USFS) on-going Section 106 consultation under the National Historic Preservation Act for Resolution Copper Mine and Southeast Arizona Land Exchange at the Tonto National Forest. In your letter, the San Carlos Apache Tribe requests the Advisory Council on Historic Preservation's (ACHP) assistance in moving forward the consultation to ensure the execution of a programmatic agreement (PA) for the undertaking. Additionally, the San Carlos Apache Tribe requests the ACHP "review and report" on whether the USFS has complied with the Section 106 regulations for this undertaking.

The ACHP appreciates the San Carlos Apache Tribe's desire to see the Section 106 process completed in a reasonable time and prior to the issuance of the Final Environmental Impact Statement. In addition, we share the San Carlos Apache Tribe's frustration in the delays and challenges that have hampered this consultation to date. However, the production and execution of a final agreement within the thirty-day timeframe that you have requested lies in the hands of the USFS, not the ACHP. The USFS, as lead Federal agency, is responsible for fulfilling the requirements of Section 106 process, including the development of the PA. The ACHP cannot mandate a time requirement for completion of this task.

Based on conversations between my staff and the USFS, following your letter, it is our understanding that the release of a revised agreement by USFS to all consulting parties is imminent. We expect this revised agreement to incorporate comments received during and following the meetings on December of 2019. In recognition of the constraints placed on this consultation, we have encouraged the USFS to provide a framework and schedule for how it intends to conclude the Section 106 process and finalizing the agreement, including milestones for responding to comments, coordinating any future consultation, and managing signature process. I encourage your office, as well as the other consulting parties, to continue to provide comments to the USFS on this revised document. If the USFS moves expeditiously, we believe consultation can still conclude with execution of the PA soon thereafter.

As to your second request, I am glad to direct our Office of Federal Agency Programs (OFAP) to undertake a review, pursuant to 36 C.F.R. § 800.9(a), of the USFS efforts to comply with Section 106 for this undertaking. I do not foresee this effort hindering the ACHP's continued participation in the ongoing

consultation nor the development of a final agreement document. Conversely, such a review will better inform both the ongoing consultation as well as assist the USFS in avoiding the systemic problems that have hindered this consultation for future undertakings. To help initiate this effort, I invite you and your staff to provide input to the OFAP on specific areas where you believe the USFS has not met its Section 106 responsibilities for this undertaking in order to focus our review. Mr. Reid Nelson, Director of OFAP, will initiate these conversations on the ACHP's behalf. Following such discussions, we will begin our review.

The ACHP appreciates your raising these concerns, and is committed to working with you and the other consulting parties to ensure the USFS complies with its Section 106 responsibilities and concludes this PA as soon as possible. I am available to discuss the matters raised in this letter with you if you would like. Please do not hesitate to contact me at 202-517-0191 or at jfowler@achp.gov at any time.

Sincerely,



John M. Fowler
Executive Director

Cc: Vernelda Grant, Tribal Historic Preservation Officer
Kathryn Leonard, Arizona State Historic Preservation Officer
U.S. Representative Raúl M. Grijalva
U.S. Representative Tom O'Halleran
U.S. Senator Bernie Sanders
Sandy Watts, Acting Southwestern Region, Regional Forester
Neal Bosworth, Tonto National Forest Supervisor